IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6080 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAMANDARSING RADHAKISHAN THAKAR

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 18/01/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. Banna Dutta for Advocate Ms. K.U. Mishra for the petitioner and learned A.G.P. Mr. K.T. Dave for the respondents nos.1, 2 and 3.

1. The detention order dated 17-4-1999 passed by the respondent no.1-Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention supplied to the petitioner under Section 9(1) of "PASA" , copy of which is produced at Annexure "C"inter alia indicate that a Prohibition Case bearing no.5042/99 dt. 14-4-1999 was registered against the petitioner at Bapunagar Police Station and Indianmade foreign liquor was seized from the possession of the petitioner which is pending investigation.

2.1 That apart from the material of above stated case, two witnesses on assurance of anonymity have supplied information against the petitioner and his bootlegging activity vide their statement dated 15-4-1999 and 16-4-1999 wherein the witnesses have narrated the incidents dated 17-3-1999 and 2-4-1999.

3. That in consideration of the above stated material, the respondent no.1 as detaining authority has come to the conclusion that the petitioner is a " bootlegger" within the meaning of Section 2(b) of PASA". That resort to enforcement of general law not being sufficient to prevent the petitioner from continuing his antisocial activity, it is necessary to pass the detention order under "PASA" and hence, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the Bar on behalf of the petitioner that the petitioner was arrested in respect to CR no.5042/99 registered at Bapunagar Police Station on 14-4-1999 and on the date of passing the impugned order, the petitioner was in police custody in respect to registered police case against him and yet the detaining authority has failed to consider the aspect of less drastic remedy of opposing and/or claiming cancellation of bail available under Section 437(5), Cr.P.C. while passing the impugned order which amounts to non application of mind on the part of the detaining authority. That the subjective satisfaction arrived at by the detaining authority having been vitiated, the impugned order is rendered invalid.

5. That in the matter of ZUBEDABIBI RASIDKAN PATHAN VS. STATE OF GUJARAT & ORS. 1995(2) G.L.R. 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the Cr.P.C. claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction thus rendering the detention order bad in law.

6. In the instant case, the grounds of detention disclose that the detaining authority was aware of the fact that the petitioner-detenu was on police remand. However, he has observed in the grounds that on completion of remand period, the petitioner was likely to be produced before the Court, and thereafter the petitioner would apply for bail, get himself released on bail and was likely to continue his antisocial activity. The said observation only suggests apprehension of the detaining authority which shows non application of mind of the detaining authority. In view of the said facts and circumstances, I am constrained to hold that the impugned order having been rendered invalid on account of non application of mind is required to be quashed and set aside.

7. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

8. In the result, the petition is allowed. The impugned order of detention dated 17-4-1999 passed by the respondent no.1- Police Commissioner, Ahmedabad against the petitioner is hereby quashed and set aside. The petitioner-detenu-Samandharsing Radhakishan Thakar is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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